

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**DONTIE S. MITCHELL,**  
Petitioner,

**v.**

**Civil No. 9:03-CV-019  
(GLS/VEB)**

**SUPERINTENDENT, Southport  
Correctional Facility,**  
Respondent.

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**APPEARANCES:**

**OF COUNSEL:**

**FOR THE PETITIONER:**

DONTIE S. MITCHELL  
Petitioner, *Pro Se*  
98-A-0071  
Upstate Correctional Facility  
P.O. Box 2001  
Malone, New York 12953

**FOR THE RESPONDENT:**

HON. ANDREW CUOMO  
Office of the Attorney General  
Albany Office  
The Capitol  
Albany, New York 12224

BRIDGET ERIN HOLOHAN  
Assistant Attorney General

**Gary L. Sharpe**  
**U.S. District Judge**

**MEMORANDUM-DECISION AND ORDER**

**I. Introduction**

After Dontie S. Mitchell filed a *habeas corpus* petition challenging his New York State conviction and sentence for First Degree Robbery, First Degree Attempted Robbery, Second Degree Criminal Possession of a Weapon, Fourth Degree Grand Larceny, First Degree Criminal Use of a Firearm, and Fifth Degree Possession of Stolen Property, see *Dkt. No. 1*; see also 28 U.S.C. § 2254, his petition was referred to Magistrate Judge Victor E. Bianchini for report and recommendation. See 28 U.S.C. § 636(b)(1)(A) & (B); Rules 8 & 10 of the Rules Governing § 2254 Petitions in the United States District Courts, *fol.* 28 U.S.C. § 2254; N.D.N.Y. R. 72.3(c). Subsequently, Judge Bianchini issued a report recommending that the petition be denied. See *Report-Recommendation ("R&R"), Dkt. No. 50*.<sup>1</sup>

Broadly construing Mitchell's petition, Judge Bianchini concluded that it raised the following issues: (1) whether Mitchell's due process rights were violated when the Appellate Division denied the suppression of his confession and affirmed his conviction, and (2) whether certain incriminating statements were improperly admitted at trial in violation of

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<sup>1</sup>The Clerk is directed to append the Report-Recommendation to this decision, and familiarity is presumed. See *Dkt. No. 50*.

Mitchell's Fifth Amendment rights. Judge Bianchini gave thorough consideration to Mitchell's arguments and the underlying record.

Based on the record, Judge Bianchini concluded the following: (1) that Mitchell was afforded a full and fair opportunity to litigate his suppression claims in the State court and (2) that his mere disagreement with the State court's outcome did not qualify as an "unconscionable breakdown" in the underlying process. Moreover, Judge Bianchini found that Mitchell failed to overcome the presumption that the State court's factual findings were incorrect with the requisite clear and convincing evidence. Finally, Judge Bianchini concluded that Mitchell failed to demonstrate by clear and convincing evidence that the trial court's factual findings regarding the voluntariness of his statements were based on an unreasonable determination of the evidence presented. *See Dkt. No. 50.*

Mitchell has now filed objections to Judge Bianchini's report. *See Dkt. Nos. 54.* Although untimely, the court has given full consideration to his objections. As such, this court's judgment entered on July 6, 2007 is hereby vacated.

Because his objections specifically attack Judge Bianchini's legal and factual findings, they will be reviewed under a *de novo* standard. *See*

*Almonte v. N.Y. State Div. of Parole*, 9:04-CV-484, 2006 WL 149049 (N.D.N.Y. Jan. 18, 2006). However, the arguments he raises in his objections were specifically addressed by Judge Bianchini in his Report-Recommendation. Accordingly, following a *de novo* review, this court accepts and adopts the recommendation of Magistrate Judge Bianchini for the reasons stated in the May 15, 2007 Report-Recommendation.

**WHEREFORE**, and for the reasons stated, it is hereby

**ORDERED** that the judgment entered on July 6, 2007 (*Dkt. No. 53*) is **VACATED**; and it is further

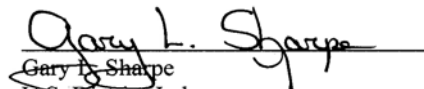
**ORDERED** that Mitchell's application for *habeas corpus* relief is **DENIED** and his petition is **DISMISSED**; and it is further

**ORDERED** that Magistrate Judge Bianchini's May 15, 2007 Report-Recommendation is **ADOPTED IN ITS ENTIRETY**; and it is further

**ORDERED** that the clerk serve a copy of this Decision and Order upon the parties.

**IT IS SO ORDERED.**

August 21, 2007  
Albany, New York

  
Gary L. Sharpe  
U.S. District Judge